

Application No.: 09/464,528
Docket No.: BB1205 US NA



A2 cord's
(c) selecting ~~plants~~ comprising a transformed plant cell wherein the heterologous nucleic acid fragment is expressed.

Kindly cancel claim 12.

Remarks

Claims 2 and 7 have been amended to address the objection raised under 37 CFR §1.75(c).

Claim 12 has been cancelled. Accordingly the rejection of claim 12 under 37 CFR 112, first paragraph, is rendered moot. Withdrawal of this ground of rejection is respectfully requested.

Claims 1 and 8 and dependent claims 2-7 and 9-11 were rejected under 37 CFR 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claim 1 has been amended to delete the phrase "consists essentially of." Support for the identity now claimed can be found in the specification on page 7 at lines 5-28. Support for hybridization under moderately stringent conditions is set forth on page 7 at lines 1-5 of the specification. An example of moderately stringent conditions is set forth on page 7 at line 3. Thus, no new matter has been added.

Claim 8 has been amended to focus on expression. Support for this can be found in the specification on page 8 at lines 13-33 and in the Examples. Thus, no new matter has been added.

In view of the foregoing discussion and amendments, Applicants respectfully request withdrawal of the rejection of the claims under 35 USC §112, first and second paragraphs. It is respectfully submitted that the claims are now in form for allowance which allowance is respectfully solicited.

The Version With Markings to Show Changes Made accompanies this response. Changes are indicated as follows: deletions are bracketed and insertions are underlined.

Should any fee be required in connection with the filing of this response, then please charge such fee to Deposit Account No. 04-1928 (E. I. du Pont de Nemours and Company).

Respectfully submitted,

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Version With Markings to Show Changes Made

Changes are shown as follows: deleted material is bracketed and inserted material is underlined.

1. (amended) An isolated nucleic acid fragment comprising:
 - (a) a promoter having at least 80% identity with any [wherein said promoter consists essentially] of the nucleotide [sequence] sequences set forth in SEQ ID NOs:6, 14, 15, or 16 based on the Clustal method of alignment [or said promoter consists essentially of a fragment or subfragment that is substantially similar and functionally equivalent to the nucleotide sequence set forth in SEQ ID NOs:6, 14, 15, or 16] or
 - b) a promoter which hybridizes with any of the nucleotide sequences set forth in SEQ ID NOs:6, 14, 15, or 16 under moderately stringent conditions.
2. (amended) A chimeric gene comprising at least one heterologous nucleic acid fragment operably linked to the promoter of Claim 1 [or Claim 10].
3. (amended) A plant [containing] comprising the chimeric gene of Claim 2.
7. (amended) [Seeds] Seed of the [plants] plant as in any one of Claims [3, 4, 5, or 6] 3-6.
8. (amended) A method of [increasing or decreasing the expression of] expressing at least one heterologous nucleic acid fragment in a plant cell which comprises:
 - (a) transforming a plant cell with the chimeric gene of Claim 2;
 - (b) growing fertile mature plants from the transformed plant cell of step (a);
 - (c) selecting plants [containing] comprising a transformed plant cell wherein the [expression of the] heterologous nucleic acid fragment is [increased or decreased] expressed.